UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,442	12/12/2003	Daniel Maddux	244950US8	2328

22850   7590   12/11/2008
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EXAMINER
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ART UNIT	PAPER NUMBER
3623	

NOTIFICATION DATE	DELIVERY MODE
12/11/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/733,442	MADDUX, DANIEL
	Examiner	**Art Unit**	
	FOLASHADE ANDERSON	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *15 August 2008*.
2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-9,11-20,23-28,30-39,42-47 and 49-66* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1,4-9,11-20,23-28,30-39,42-47 and 49-66* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on *08/15/2008* is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   This office action is made final in response to Applicant's submission filed on August 15, 2008. Currently, claims 1, 4-9, 11-20, 23-28, 30-39, 42-47, and 49-66 are pending. Claims 58-66 are newly added. Claims 2, 3, 10, 21, 22, 29, 40, 41, and 48 are canceled. Claims 1, 4, 5, 11, 12-15, 18, 20, 23, 24, 30, 33, 37, 39, 42, 43, and 49 are amended.

Response to Amendment

2.   Applicant's amendment to reference number "21" of figure 2 is sufficient to overcome the drawing rejection set forth in the previous office action.

3.   Applicant's amendments to figure 2 to reference number "23a" and "23b" and paragraph 0007 are sufficient to overcome the drawing rejection set forth in the previous office action.

4.   Applicant's amendments to claims 1 and 39 are sufficient to overcome the 35 U.S.C. 101 rejection set fourth in the previous office action.

5.   Applicant's amendment to claim 4 is sufficient to overcome the 35 U.S.C. 112, second paragraph, rejection set forth in the previous office action.

Response to Arguments

6.   Applicant's arguments, with respect to drawing objections raised against figures 1-4, have been fully considered and are persuasive. The drawing objection with respect to figures 1-4 of the previous office action has been withdrawn.

7.   Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues with respect to the Sweitzer (US Patent 6,018,617) reference does not

disclose (1) generating test questions based on the test taker, remarks page 23, and (2)

the evaluations include awarding a predetermined total amount of points for a correct

answer and awarding a predetermined part of said total amount of points for one of the

alternate answer and an answer that deviates from the correct answer by a

predetermined criteria, remarks page 23. Additionally Applicant's request documentary

evidence with respect the official notices take with respect to (3) the group identifier of

claim 1, 20 and 39, the receiving and storing a user identification, see remarks page 24

and (4) receiving and storing a user identification and an assessment identifier of claims

3, 21, 41, see remarks page 25.

In response to Applicant's argument (1) Examiner respectfully disagrees.

Sweitzer teaches, as applicant points out, "allows an author to state a problem as a

high-level, abstract expression, from which the system generates variations and

determines the presentation automatically," (col. 3, lines 1-5), and "by editing

preexisting problems . . . [t]he authoring tool stores problems descriptions in files," (col.

9, lines 44-54), which is equivalent to Applicant's claim 1 that states "deriving in a

process, plurality of dynamic questions from an electronic memory."   Therefore

Applicant's representation that the test taker (author) rather than the processor

generates the question is not supported in the claims language.   In other word t is

noted that the features upon which applicant relies (i.e., Sweitzer describes generating

test questions based on input from the author, not the test taker.) are not recited in the

rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further is Applicant intent is to argue "receiving a request for said assessment from at least one test taker terminal" then the Examiner notes that this newly added amendment has been fully address in the updated rejection below.

In response to Applicant's argument (2) Examiner notes that the argument is directed to newly amended claim language, which have been fully addressed in the updated rejection below.

In response to Applicant's argument (3) Examiner respectfully disagrees. Graduate Record Examinations Biology Practice Book, published 2001, provides evidence which fully supports the official notice taken with respect to the group identifier in the previous office action. See, the "center number" of box 2 on page 69 is the equivalent of a group identifier. Examiner notes that the inclusion of this evidence does not forfeit the ability to make this office action final, since this response does not constitute a new ground of rejection, see MPEP 2144.03(d).

In response to Applicant's argument (4) Examiner respectfully disagrees. Graduate Record Examinations Biology Practice Book, published 2001, provides evidence which fully supports the official notice, receiving and storing user identification and an assessment identifier, taken in the previous office action. See, the "title code" box 6 on page 69 is the equivalent of assessment identifier and the "registration number" is the equivalent of user identification. Further see "these analyses may reveal

. . . inappropriate for the total group or a particular subgroup of examinees . . . then

scores are adjusted so examinee who took an easier edition of the test are not

penalized," (page 4, col. 1), which implies that the user and assessment identifiers are

received and stored with the score of each test otherwise the scoring system would not

be able to make adjustments to scores without being able to identify easier assessment

and the user that complete those assessments. Examiner notes that the inclusion of

this evidence does not forfeit the ability to make this office action final, since this

response does not constitute a new ground of rejection, see MPEP 2144.03(d).

Claim Objections

8.   Claim 59 and 63 objected to because of the following informalities: the claims

appear to be an exact duplication of the other. Appropriate correction is required.

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 1, 4-7, 11-15, 19, 20, 23-26, 30-34, 38, 39, 42-45, 49-53, and 57 are

rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent

6,018,617) in view of Egnor (US Patent 5,180,309) and Miele (US Patent 7,286,793

B1).

In regards to claims 1, 20, and 39 Sweitzer teaches a **computer-based method, comprising steps of:**

- **receiving a request for said assessment** (col. 3, lines 1-5; where the requestor is author)**;**

- **presenting a test corresponding to said requested assessment** (col.3, lines 1-5; where the requestor is author)**; and**

- **deriving in a processor a plurality of dynamic questions from an electronic memory for inclusion in said test,** (figure 1 and col. 9, lines 44-47) **said each of the plurality of dynamic questions including a stem question and one of a stem question formula, a stem question range, a stem question variable, and a stem question constant** (figure 3, col.11, lines 13-21 and col. 12, lines 24-38)**.**

Further Sweitzer teaches: student responses are analyzed and graded by a computer (col. 1, lines 22-25), an interface (terminal) through which a request is received (figure 1 and col. 3, lines 1-5), matching encoding test to allow for matching to test answers (Sweitzer col. 18, lines 51-55).

Sweitzer does not expressly teach:

- **from at least one test taker terminal, said request including a user identification and an assessment identifier;**

- **storing the user identification and the assessment identifier**

- **a predetermined total number of points for awarding to a provided answer and a predetermined criteria used to evaluate the provided answer;**

- evaluating in the processor, the provided answer provided in response to each dynamic question and each static question retrieved from the electronic memory and included in said test, said evaluating step including awarding the predetermined total amount of points for a correct answer and awarding a predetermined part of said total amount of points for one of an alternate answer and an answer that deviates from the correct answer by the predetermined criteria;

- creating the assessment based on the evaluated answers, said assessment including an assessed level of knowledge

- creating a recommendation based on the assessment, when the assessed level of knowledge is lower than a predetermined trigger; and

- providing at least one of the assessment and the recommendation to at least one of the test taker, a test creator and an employee manager and a vendor.

Egnor teaches in an analogous art:

- receiving a request for said assessment from at least one test taker terminal (col. 2, lines 32-35).

- a predetermined total number of points for awarding to a provided answer and a predetermined criteria used to evaluate the provided answer (col. 2, lines 35-37 and 67-68).

- evaluating in the processor (col. 1, lines 57-63 and col. 6, lines 5-37), the provided answer provided in response to each dynamic question and each

static question retrieved from the electronic memory and included in said test, said evaluating step including awarding the predetermined total amount of points for a correct answer (col. 3, lines 7-10) **and awarding a predetermined part of said total amount of points for one of an alternate answer and an answer that deviates from the correct answer by the predetermined criteria** (col. 3, lines 10-20);

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Sweitzer the above listed features as taught by Egnor since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Miele teaches in an analogous art:

- **evaluating an answer to one of said dynamic question and said static question to create said assessment** (col. 15, lines 9-15);

- **creating the assessment based on the evaluated answers, said assessment including an assessed level of knowledge** (fig. 6 col. 8, lines 19-35 and col. 15, lines 23-31)

- **creating a recommendation based on the assessment, when the assessed level of knowledge is lower than a predetermined trigger; and**

- **providing one of said assessment and a recommendation to one of a test taker, a test creator, an employee manager, and a vendor, said recommendation corresponding to said assessment** (col. 15, lines 23-28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Miele to modify the invention of Sweitzer to increasing efficiency and reduce the cost with which a topic may be taught to the individual (Miele col. 15, lines 36-38).

Further Official notice is taken that **receiving and storing a user identification and an assessment identifier** was a common, old and well known manual as well as electronic practice in the art at the time the invention was made in order to match test responses to the proper test answer key and allow for the return of corrected responses to the test takers. For example when one takes the law school admission test (LSAT) the test taker must encode the answer sheet with their law school admission council (LSAC) account number and the test identification number in order to ensure that the proper answer key is used to score the test and that the results are returned to the proper test taker.

It would have been obvious to use the old well known practice of **receiving and storing a user identification and an assessment identifier** in the invention of Sweitzer to prevent testing duplication (Sweitzer col. 2, lines 56-60).

While the Examiner understand the context of the claimed invention is discussed in terms of the creation and implantation of assessment thorough the use of a computer enabled system and that Sweitzer context is that of a computer implanted method and

system of the paper administration assessment in the analogous arena of mathematic test preparation it would have been obvious to one of ordinary skill in the art at the time, as Sweitzer alludes to, the invention was made to assess the user abilities on the computer presentation rather than via paper (col. 1, lines 22-25 and col. 2, lines 10-11).

Further in light of the recent KSR decision KSR International Co. v. Teleflex Inc 550 U.S. , 82 USPQ2d 1385. The inventive step of assessing via a computer system is obvious in that it applies a known technique to known method i.e. the method disclosed by Sweitzer.

Similarly claims 20 and 39 which are direct to a system and product for implementing claim 1, are essentially the same as claim 1 and are therefore reject for substantially the same reasons given above with regard to claim 1.

In regards to claim 19, 38 and 57 Sweitzer teaches

- **said step of receiving a request for said assessment includes receiving a request for a group assessment** col. 3, lines 1-5; where the requestor is author)**; and**

- **said step of presenting a test corresponding to said requested assessment includes presenting a group assessment comprising a plurality of assessments (**col.3, lines 1-5; where the requestor is author)**, each of said plurality of assessments including one of**

    o **a unique stem question** (fig. 3, #42)**,**

    o **a common stem question** (fig. 3, #40)**,**

    o **a common stem question range** (fig. 3, #38)**,**

    o   **a common stem question variable** (fig. 3, #36)**, and**

    o   **a common stem question constant** (fig. 3 #42, where the denominator is the constant in the shown example)**.**

Sweitzer does not teach **a group identifier.**

Official notice is taken that **a group identifier** was old and well know technique used in the art at the time the invention was made for example in the context of Sweitzer which matches test to test answer (col.18, lines 52-55) use of the system i.e. a high school teacher might want to give each class period a different test to prevent the sharing of answers between classes among the students. As such each class period would be the group identifier used to associate the test to the class thus ensuring the proper answer key was used in the grading process.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the old and well known technique of a group identifier to modify the invention of Sweitzer for the purpose of preventing cheating (Sweitzer col.2, lines 4-6).

In regards to claims 2, 21 and 40 Sweitzer does not expressly disclose **wherein said test also includes a static question.**

Miele implies **wherein said test also includes a static question** (col. 15, lines 9-13; where information request would be an example of a static type question) in an analogous art to perform analysis on one or more attributes.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Miele in the invention of Sweitzer to allow

for the generation of statistical analysis of one or more attributes (Miele col. 4, lines 32-36).

Similarly claims 21 and 40, which are direct to a system and product respectively for implementing claim 2, are essentially the same as claim 2 and are therefore reject for substantially the same reasons given above with regard to claim 2.

In regards to claims 4, 23, and 42 Sweitzer teaches **an assessment level** (col. 10, lines 39-45)

Sweitzer does not expressly teach **wherein said assessment identifier comprises at least one of:**

- **an assessment topic;**

- **an assessment sub-topic;**

- **a goal; and**

- **a self-assessment.**

Miele teaches in an analogous art **wherein said assessment identifier comprises at least one of:**

- **an assessment topic** (col. 3, lines 50-55)**;**

- **an assessment sub-topic** (col. 3, lines 50-55)**;**

- **a goal** (col. 15, lines 40-44; where individual's educational needs is the equivalent of a knowledge goal)**; and**

- **a self-assessment** (col. 15, lines 40-44; where individual tailored testing is the equivalent of knowledge self-assessment)**.**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Meile in the invention of Sweitzer for the purpose of increasing efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 23 and 42, which are direct to a system and product respectively for implementing claim 4, are essentially the same as claim 4 and are therefore reject for substantially the same reasons given above with regard to claim 4.

In regards to claims 5, 24 and 43 Switzer teaches **dynamically creating said test from said electronic memory in correspondence with a predetermined test creation rule** (col. 12, lines 24-30 where variation rules (test creation rule) allow for the dynamic creation and predetermined in the step of authoring).

Switzer dos not teach **said predetermined test creation rule configured to enable a correlation between a test characteristic and one of said user identification and said assessment identifier**.

Meile teaches **said predetermined test creation rule configured to enable a correlation between a test characteristic and one of said user identification and said assessment identifier** (col. 15, lines 9-15; where meeting the required input parameters is the equivalent of the correlation) in an analogous art for the purpose of encoding and assemble an examination.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Meile in the invention of Sweitzer for the

purpose of increasing efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 24 and 43, which are direct to a system and product respectively for implementing claim 5, are essentially the same as claim 5 and are therefore reject for substantially the same reasons given above with regard to claim 5.

In regards to claims 6, 25 and 44 Switzer teaches **wherein said test characteristic comprises:**

- **a number of questions** (col. 18, lines 18-21)**;**

- **a test difficulty level** (col. 10, lines 40-45)**;**

- **a question sequence** (col. 9, lines 56-59 and col. 18, lines 23-24)**; and**

- **a question grouping** (col. 9, lines 56-59)**;.**

Switzer does not explicitly teach **a test duration.**

Meile teaches **a test duration** (col. 14, lines 17-22) in an analogous art for the purpose testing as a function of time.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Meile to modify the invention of Switzer to increasing efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 25 and 44, which are direct to a system and product respectively for implementing claim 6, are essentially the same as claim 6 and are therefore reject for substantially the same reasons given above with regard to claim 6.

In regards to claims 7, 26 and 45 Switzer teaches **incorporating said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant into said test in correspondence** (figure 3, col.11, lines 13-21 and col. 12, lines 24-38). Additionally Switzer teaches that sequencing student files and questions and answers (col. 18, lines 52-54).

Switzer does not expressly teach **a predetermined question selection rule, said predetermined question selection rule configured to enable a correlation between said stem question and said user identification and said assessment identifier.**

Miler teaches **a predetermined question selection rule, said predetermined question selection rule configured to enable a correlation between said stem question and said user identification and said assessment identifier** (col. 15, lines 9-15; where meeting the required input parameters is the equivalent of the correlation) in an analogous art for the purpose of encoding and assemble an examination.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Meile to modify the invention of Sweitzer to increasing efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 26 and 45, which are direct to a system and product respectively for implementing claim 7, are essentially the same as claim 7 and are therefore reject for substantially the same reasons given above with regard to claim 7.

In regards to claim 11, 30 and 49 Sweitzer does not expressly teach **providing said recommendation based on a predetermined recommendation selection rule, said predetermined recommendation rule configured to enable a correlation between an answer provided in response to said dynamic question to said recommendation.**

Miele teaches **providing said recommendation based on a predetermined recommendation selection rule, said predetermined recommendation rule configured to enable a correlation between an answer provided in response to said dynamic question to said recommendation** (fig. 6, and col. 15, lines 25-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Miele to modify the invention of Sweitzer to increasing efficiency and reduce the cost with which a topic may be taught to the individual (Miele col. 15, lines 36-38).

Similarly claims 30 and 49, which are direct to a system and product respectively for implementing claim 11, are essentially the same as claim 11 and are therefore reject for substantially the same reasons given above with regard to claim 11.

In regards to claims 12, 13 31, 32 and 50-52 which are directed toward the

- **creating said predetermined test creation (question selection, recommendation selection) rule; and**

- **storing said predetermined test creation question selection, recommendation selection) rule in said electronic memory.**

Sweitzer teaches creating for example variation rules (col. 12, lines 57-60) and storing variation rules (col. 12, lines 24-27) however Sweitzer does not expressly teach **creating said predetermined test creation (question selection, recommendation selection) rule** or **storing said predetermined test creation question selection, recommendation selection) rule in said electronic archive;** however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.*

Similarly claims 31, 32 and 50-52, which are direct to a system and product respectively for implementing claims 12 and 13, are essentially the same as claims 12 and 13 and are therefore reject for substantially the same reasons given above with regard to claims 12 and 13.

In regards to claims 15, 34 and 53 Sweitzer teaches

- **creating said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant** (figure 3, col.11, lines 13-21 and col. 12, lines 24-38)**; and**

- **storing said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant in said electronic memory** (figure 1 and col. 9, lines 44-47).

Similarly claims 34 and 35, which are direct to a system and product respectively for implementing claim 15, are essentially the same as claim 15 and are therefore reject for substantially the same reasons given above with regard to claim 15.

11.   Claims 8, 9, 18, 27, 28, 37, 46, 47 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent 6,018,617) Egnor (US Patent 5,180,309) and Miele (US Patent 7,286,793 B1) as applied to claims 7, 26 and 45 above, and further in view of Ho et al (5,779,486)

In regards to claims 8, 27 and 46 neither Sweitzer nor Miele expressly teach **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and a previous test result.**

Ho teaches **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and a previous test result** (col. 2, lines 23-33) in an analogous art for the purpose of tracking progress as a function of time.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Ho modify the invention of Sweitzer in order to provide feedback in order to more precisely assess and to enhance the users understanding in a subject (Ho col. 1, lines 53-57)

Similarly claims 27 and 46, which are direct to a system and product respectively for implementing claim 8, are essentially the same as claim 8 and are therefore reject for substantially the same reasons given above with regard to claim 8.

In regards to claim 9, 28 and 47 neither Sweitzer nor Miele expressly teaches **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and another question presented during a previous test.**

Ho teaches **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and another question presented during a previous test** (col. 5, lines 4-27) in an analogous art for the purpose of tracking progress as a function of time.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Ho modify the invention of Sweitzer in order to provide feedback in order to more precisely assess and to enhance the users understanding in a subject (Ho col. 1, lines 53-57)

Similarly claims 28 and 47, which are direct to a system and product respectively for implementing claim 9, are essentially the same as claim 9 and are therefore reject for substantially the same reasons given above with regard to claim 9.

- **creating said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant; and**

- **storing said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant in said electronic archive.**

In regards to claims 18, 37 and 56 neither Sweitzer nor Miele expressly teaches **storing said answer to one of said dynamic question and said static question in the electronic memory.**

Ho teaches **storing said answer to one of said dynamic question and said static question in the electronic memory** (col. 4, lines 21-28) in analogous art for the purpose generating user progress reports.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Ho modify the invention of Sweitzer in order to provide feedback in order to more precisely assess and to enhance the users understanding in a subject (Ho col. 1, lines 53-57)

Similarly claims 37 and 56, which are direct to a system and product respectively for implementing claim 18, are essentially the same as claim 18 and are therefore reject for substantially the same reasons given above with regard to claim 18.

12.   Claims 16, 17, 35, 36, 54, 55 and 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent 6,018,617), Egnor (US Patent 5,180,309) and Miele (US Patent 7,286,793) as applied to claims 11, 30 and 49 above, and further in view of Lippman (US Patent 6,544, 042 B2)

In regards to claims 16, 35 and 54 Sweitzer does not expressly teach **providing a recommendation to purchase a product.**

Miele teaches **providing a recommendation** (col.15, lines 25-28); however Miele does not expressly teach that the recommendation is a **purchase a product.**

Lippman teaches **providing a recommendation to purchase a product** (col. 7, lines 33-36 and 62-65) in an analogous art for the purpose of providing recommended products directly to the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Lippman to modify the disclosure of Miele use in the invention of Sweitzer to act immediately on the recommendation for the appropriate study aids based on the analyzes of the user's score (Lippman col. 1, lines 40-45).

Similarly claims 35 and 54, which are direct to a system and product respectively for implementing claim 16, are essentially the same as claim 16 and are therefore reject for substantially the same reasons given above with regard to claim 16.

In regards to claims 17, 36 and 55 neither Sweitzer nor Miele teaches **receiving and storing payment information**

Lippman teaches **receiving and storing payment information** (col. 6, line 8-14, where a subscription implies the storing of payment information)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Lippman to modify the disclosure of Miele use in the invention of Sweitzer to act immediately on the recommendation for the

appropriate study aids based on the analyzes of the user's score (Lippman col. 1, lines 40-45).

Similarly claims 36 and 55, which are direct to a system and product respectively for implementing claim 17, are essentially the same as claim 17 and are therefore reject for substantially the same reasons given above with regard to claim 17.

In regards to claims 64-66 Sweitzer teaches **wherein said test difficulty level is determined by one of an explicit definition by a test maker** (col. 10, lines 43-45, col. 11 lines 3-12). Sweitzer does not teach **a predetermined analysis of a past performance of the test taker**.

Miele teaches **a predetermined analysis of a past performance of the test taker** (col. 4, lines 44-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Miele in the invention of Sweitzer for the purpose of increasing efficiency and reduce the cost with which a topic may be taught to the individual (Miele col. 15, lines 36-38).

Similarly claims 65 and 66, which are direct to a system and product respectively for implementing claim 64, are essentially the same as claim 64 and are therefore reject for substantially the same reasons given above with regard to claim 64.

13.   Claims 14, 33 and 58-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent 6,018,617) and Miele (US Patent 7,286,793) as

applied to claim 11 and 30 above, and further in view of Rosenberg et al (US Publication 2002/0103692).

Claims 14 and 33 are essentially the same as claims 12 and are therefore reject for substantially the same reasons given above with regard to claims 12 however these claims recite the additional language of **including a product rating and quantity of product to recommend** which are not taught by Sweitzer and Miele.

Rosenberg teaches **a product rating and quantity of product to recommend** (0028, where it is understood in the context of the discussion the item is a single item however it is old and well known in the art that a quantity maybe suggested as well for example when one buys a toy on-line the site recommends that the buyer also buy x number of batteries).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Miele and Sweitzer the product rating and quantity of product to recommend as taught by Rosenburg since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Similarly claim 33, which is direct to the system for implementing claim 17, is essentially the same as claim 17 and is therefore reject for substantially the same reasons given above with regard to claim 17.

In regards to claims 58-63 Sweitzer is silent on wherein said recommendation to purchase a product includes a recommendation to purchase at least one of a book, a video, a computer software, and an online course

Miele teaches wherein said recommendation to purchase (request) a product includes a recommendation to purchase at least one of a book, a video, a computer software, and an online course (a catalogue a phone call and an e-mail newsletter). (col. 15, lines 25-31 where instructional modules are the equivalent of software.)

Miele does not teach that the modules are for purchase; however Rosenburg teaches this feature (0007).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Miele and Sweitzer the purchasing feature as taught by Rosenburg since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

In regards to claim 59 and 63 Miele teaches a software recommendation. Miele does not expressly teach the specific data recited in claims recommendation of a catalogue a phone call and an e-mail newsletter; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive

material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.*

Similarly claims 60-62, which are direct to a system and product respectively for implementing claim 58, are essentially the same as claim 58 and are therefore reject for substantially the same reasons given above with regard to claim 58.

Conclusion

14.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bedard et al (US Publication 2006/0282304 A1) which teaches product rating and recommendation, Lovegren (US Patent 7,269,579 B2) which teaches tracking of students progress in a subject, and ScanTron homepage via web archive (published date 08/21/01) the various computerized question formats.

15.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.   Accordingly, **THIS ACTION IS MADE FINAL**.   See MPEP § 706.07(a).   Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

16.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to FOLASHADE ANDERSON whose telephone number is

(571)270-3331. The examiner can normally be reached on Monday through Thursday

8:00 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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you have questions on access to the Private PAIR system, contact the Electronic

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/Folashade Anderson/
Examiner, Art Unit 3623

/Andre Boyce/
Primary Examiner, Art Unit 3623